

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 375 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
MANJULABEN WD/O RAMANLAL                      NATHALAL

Versus

BAI GAJIBEN WD/O RAMANLAL                      PURSHOTTAM  
-----

Appearance:

MR NAGIN N GANDHI for Petitioners  
MR MB GANDHI for Respondent No. 1  
-----

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 06/09/2000

CAV JUDGEMENT

This is a Civil Revision Application filed under Sec.29(2) of the Bombay Rents Hotel & Lodging House Rates Control Act, 1947 (same will be referred to hereinafter as the Act for the sake of brevity and convenience), directed against the judgment Ex.10 dated 22nd February,

1988 rendered by the Appellate Bench of the Court of Small Causes Court at Ahmedabad in Civil Appeal No. 209 of 1981 by which the Appellate Bench set aside the judgment Ex.100 and decree dated 30th April, 1981 passed by the learned Judge, Court No.7, Small Causes Court, Ahmedabad (who will be referred to as learned Judge of the trial Court) in H.R.P.Suit No. 5083 of 1977.

By allowing the said appeal, the learned Judges of the Appellate Bench, Small Causes Court, Ahmedabad decreed the suit in favour of the present revision opponents (plaintiffs) directing the revision petitioners (defendants) to hand over the vacant and peaceful possession of the suit premises to the plaintiffs i.e. revision opponents on or before 31st July, 1988. By that judgment, the Appellate Bench of the Small Causes Court, Ahmedabad, made the plaintiffs entitled to recover Rs.2,113/- being an amount of rent and notice charges. They were also made entitled to recover Rs.81/- per month by way of mesne profits from the date of the suit till recovery of possession of the suit premises.

2. In this Civil Revision Application, the revision petitioners are the heirs and legal representatives of original defendant/tenant Ramanlal Nathalal and the revision opponents are the heirs and legal representatives of the original plaintiff/landlord Ramanlal Purshottamdas in H.R.P.Suit No. 5083 of 1977 which was pending on the file of the learned Judge of the trial court. For the sake of convenience, the parties will be referred to hereinafter as the landlords and tenants respectively, at appropriate places.

3. The facts leading to this present Civil Revision Application, in a nutshell, are as follows:-

The original landlord Ramanlal Purshottamdas was a sole owner of the suit premises bearing No. 4824 Municipal Census No. 2976 situated in Kalupur, Ward No.2, Ratanpol at Zaveriwad Naka in Ahmedabad. That suit premises are described in detail with more particulars in para 1 of the plaint. That suit premises were let to the original tenant Ramanlal Nathalal by original landlord Ramanlal Purshottamdas. The original tenant Ramanlal Nathalal had taken the suit premises on rental basis for which he executed a rent note for a limited period of 11 months and 29 days. It is the case of the plaintiffs that the original defendant/tenant Ramanlal Nathalal was using the ground-floor i.e. lower portion of the suit premises for the purpose of business. He was running a Novelty Stores (Cutlery) in lower portion of the suit

premises. Two upper portions were being used for ingress and egress. With the consent of the said tenant original landlord was using two upper portions of the property for storing the household goods of the landlord. The original tenant was never using two upper portions of the suit property. He was only using the lower portion for shop purpose. The original tenant, during his life time, was residing with his family members in Devsa's Pada Pol, and therefore, lower portion of the suit property was only used for running a shop of Novelty Stores of which the tenant had executed a rent note on 8th December, 1953. The suit premises were not to be sublet, assigned or transferred to any one else.

As the original tenant expired, the defendants shown in the cause-title of the plaint who are the heirs and legal representatives of the original tenant are tenants. The defendants are not living in Ahmedabad and they do not require the suit premises. They all reside permanently at Dahegam. The original landlord died, and therefore, his heirs and legal representatives had no other source of income and as all daughters of the original landlord were aged one, the suit premises are bonafide required by them for their personal use for the maintenance of the family of the plaintiff.

It is a specific case of the plaintiffs that one Babulal Nathalal who is running a shop in the name and style of Bombay Fashion Hall, gave a false notice dated 31st December, 1972. He is in illegal possession of the suit premises. He has made a show that he was running a partnership business with the original tenant and he was having possession of the suit premises as a partner. Instead of Novelty Stores, now he has changed the name of business to Bombay Fashion Hall. He has alleged that he is only owner of the suit premises and as such as per the case of the plaintiffs, the defendants have committed the breach of terms and conditions of the tenancy. It is the case of the plaintiffs that original defendant had handed over possession of the suit premises to said Babulal Nathalal by taking a huge amount in form of "Paghadi". Said Babulal Nathalal was never a tenant. Under the circumstances, the plaintiffs served the suit notice dt. 19th August, 1977 on the defendants. The defendants gave evasive reply to the said notice. Thereafter, the plaintiffs i.e. heirs and legal representatives of original landlord filed H.R.P.Suit No. 5087 of 1977 in the Court of the Learned Judge, Small Cause Court No.7, Ahmedabad against the heirs and legal representatives of the original tenant on 13th December, 1977. In that suit, they did not join Babulal Nathalal as one of the

parties.

4. In that suit, the defendants appeared and contested the suit by filing a written statement. They have denied practically all the pleadings of the plaintiffs pleaded in the plaint of the suit. Though the rent note was executed in the name of original tenant late Ramanlal Nathalal, the defendants have come with a specific case that Ramanlal Nathalal and Babulal Nathalal (alleged trespasser inducted as the subtenant in the suit premises as alleged by the plaintiffs) were the brothers and they were running the suit shop, jointly. They were carrying on business of cutlery store of Bangles and allied articles in the name and style as Bombay fashion Hall. It is their case that the upper portion of the suit property was also being used by the defendants. The defendants have advanced their case that the husband of the defendant no.1 and brother Babulal were living in Devsa's Pole and running a shop in the name and style as Bombay Fashion Hall and that Babulal Nathalal is the sole owner of it. They have also denied that the defendants have sublet, assigned or transferred the suit premises to said Babulal Nathalal. After the death of defendant no.1's husband i.e. Ramanlal Nathalal, the defendant's brother Babulal Nathalal were living together in Ahmedabad but thereafter the Partnership Deed was executed on 9th November, 1961 and both the brothers were running a shop in partnership and after sometime, the defendants' family went to Dahegam and husband of the defendant no.1 was commuting from Dahegam to Ahmedabad but because of ill-health, he could not attend the business, and therefore, the partnership was dissolved by a Deed of Dissolution dt. 21st October, 1968, and the suit property with all rights of partnership, and the shop materials continued to remain with Ramanlal Nathalal. During the life time of tenant, Babulal passed rent receipts in favour of the husband of the plaintiff No. 1 and the rent receipts were executed by Babulal Nathalal. In short, the defendants have advanced their case that Babulal Nathalal is in possession of the suit premises legally and on dissolution of partnership, he has remained only a sole partner in the business. They requested the learned Judge of the trial court to dismiss the suit as against the defendants.

5. From pleadings of both the parties, the learned Judge of the trial court framed issues at Ex.28. Thereafter by keeping in mind the issues framed by the court, both the parties led their oral as well as documentary evidence in support of their respective

cases. It is pertinent to note that in this case, the person who is alleged to be a trespasser as subtenant of original tenant Ramanlal Nathalal, i.e. Babulal Nathalal has given his evidence in detail. The learned Judge of the trial court, after hearing the arguments of the learned advocates of both the parties and after appreciating the evidence on record, did not agree with the case of the plaintiffs and he was pleased to dismiss the suit of the plaintiffs with costs. By rendering his judgment Ex.100 dated 30th April, 1981, the learned Judge of the trial court dismissed the suit of the plaintiffs for possession of the suit premises and also for arrears of rent. Simultaneously, he was pleased to fix the standard rent of the suit premises at Rs.81/- per month inclusive of all taxes. The plaintiffs were made entitled to recover the rent at the rate of Rs.81/- per month from the date of filing of the suit till the date of realisation of rent account.

6. Being aggrieved against and dissatisfied with the said judgment Ex. 100 rendered by the learned Judge of the trial court, original plaintiffs preferred Civil Appeal No.209 of 1981 to the Appellate Bench of the Small Causes Court at Ahmedabad. In that Civil Appeal, the learned Judges of the Appellate Bench heard the arguments of the learned advocates for both the parties and after perusal of record and proceedings of the suit and after appreciating the evidence led by both the parties in the suit before the trial court, the Appellate Bench rendered the judgment Ex.100 on 22nd February, 1988 by which the appeal filed by the original plaintiffs was allowed and the judgment rendered by the learned Judge of the trial court was set aside. The learned Judges of the Appellate Bench did not accept the case of the plaintiffs falling under Sec.13(1)(g) of the Act on the ground that the suit premises are not bonafide and reasonably required by the plaintiffs and their family members. The learned Judges of the Appellate Bench were pleased to accept the case of subletting advanced by the plaintiffs in the trial court. They also refused the case of the defendants that the plaintiffs have no right to file the suit. By giving answer to specific Issue No.5, the learned Judges of the Appellate Bench were pleased to hold that the learned Judge of the trial court has erred in holding that the suit is bad on the ground of nonjoinder of parties, as alleged by the tenants that Babulal Nathalal is not made a party to the suit. Thus, the learned Judges of the Appellate Bench were pleased to allow the appeal and passed a decree for eviction of suit premises by the defendants in favour of the plaintiffs on the ground of subletting. They directed defendants to hand over

peaceful possession of the suit premises to the plaintiffs on or before 31st July, 1988.

7. Being aggrieved against and dissatisfied with the said judgment Ex.10 dated 22nd February, 1988 rendered by the learned Judges of the Appellate Bench of Small Causes Court, Ahmedabad in Civil Appeal No. 209 of 1981, the original defendants have preferred this Civil Revision Application to this court challenging the correctness, legality and propriety of the said judgment. It may be noted that the original plaintiffs have not preferred any Civil Revision Application challenging the judgment of the Appellate Bench by which their plea for eviction of suit premises under Sec. 13(1)(a) read with Sec.13(2) of the Act.

8. Here in this Civil Revision Application, the revision opponent no.3 Ranjanben Ramanlal Modi filed one additional affidavit dated 4th July, 2000 along with xerox copies of certain documents. Thereafter one Rameshbhai Nagajihai Patel filed affidavit-in-reply dated 18/7/2000 along with xerox copies of two documents. They were taken on record. Before the learned advocates of both the parties started to advance their arguments, they made statements at the Bar that now they do not want to rely on and refer these additional affidavit and affidavit-in-reply and the documents produced therewith, and therefore, this court has not taken into consideration any of the affidavits and documents produced therewith.

9. I have heard the arguments advanced by Shri N.N.Gandhi, the learned advocate for the revision -petitioners and Shri M.B.Gandhi, the learned advocate for the revision -respondents in detail at length. Shri N.N.Gandhi, the learned advocate for the revision petitioners had read the evidence of almost all the witnesses in between the line examined by the parties in the suit.

10. He has canvassed his arguments mainly on the following points:-

(i) Babulal Nathalal has proved that he is a tenant.

Eventhough he is in possession of the suit premises, he is not joined as one of the parties in the suit;

(ii) As per the case of the plaintiffs, the original defendant has sublet the suit premises to said Babulal Nathalal and therefore, the said

subtenant -Babulal Nathalal is required to be joined as one of the defendants.

(iii) (A) As observed by the learned Judge of the trial court in his judgment, previously the suit was filed against the original defendant and that suit was registered as Regular Civil Suit No. 2361 of 1973 in which it was a ground with a view to recover arrears of rent and possession and because of some technical defects in the notice, that suit was withdrawn and the defendant was served with notice dt. 19th August, 1977 and thereafter this present suit has been filed.

(B) Under the provision of Order 23 Rule 3A of Civil Procedure Code, the present second suit is barred. As per the provisions of Order 23 Rule 3A of Civil Procedure Code, no suit shall lie to set aside any decree on the ground that compromise on which the decree is based was not lawful.

(iv) On the facts and circumstances of the case, the judgment is totally perverse and in no case, it can be said that the judgment is according to law.

11. Shri N.N.Gandhi, the learned advocate for the revision petitioners has read the judgment challenged in this Civil Revision Application. Shri Gandhi has vehemently argued that the learned Judges of the Appellate Bench have not appreciated the evidence in its correct perspective in the manner in which they ought to have appreciated the evidence. He has emphatically argued that on reading the judgment, it can safely be said that the judgment is perverse and in no case it can be allowed to be confirmed.

12. As against the arguments of Shri N.N.Gandhi, Shri M.B.Gandhi, the learned advocate for the revision opponents has argued that looking to well settled legal position with regard to scope and ambit of Sec.29(2) of the Act and powers of the High Court which can be exercised in its revisional jurisdiction, now this court cannot rehear the case and reappraise the evidence and come to a different conclusion other than conclusion arrived at by the learned Judges of the Appellate Bench.

13. Shri M.B.Gandhi, the learned advocate for the revision opponents has cited the following certain authorities in support of his contentions on the point that at a revisional stage, this court cannot rehear the case and reappreciate the evidence and come to a different conclusion:-

(i) In case of PATEL VALMIK HIMATLAL AND OTHERS vs. PATEL MOHANLAL MULJIBHAI (DEAD) THROUGH LRS., reported in (1998) 7 SCC 383, the Hon'ble Supreme Court has been pleased to make the legal position clear on the point of powers of this Court under Section 29(2) of the Act. It has been held that-

"The powers under Section 29(2) of the Act are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision, but it does not vest the High Court with the power to rehear the matter and reappreciate the evidence. The mere fact that a different view is possible on reappreciation of evidence cannot be a ground for exercise of revisional powers. The High Court cannot substitute its own findings on a question of fact for the findings recorded by the courts below on reappraisal of evidence".

(ii) In the case of MANJIBHAI SHAMJIBHAI v. NATRAJ THEATRE & ANR, reported in 1999 (1) G.L.H. 749, this court has referred to aforesaid case of Patel Valmik Himatlal (supra) in Para 7 of the judgment and by following the aforesaid Judgment of the Hon'ble Supreme Court, this court has observed in Para 8 on Page 752 as follows:-

" This Court in Kusumben Wd/o Vasantlal & Ors. v. Shrenikbhai Kasturbhai & Ors. 1998 (2) GLH 426 also also took similar view. In view of the Apex Court's verdict interference by the High Court in revision of this nature can be done only for a limited purpose of correcting errors of law in the judgments of the Courts below. It has, therefore, to be seen whether the judgments and decrees of the Courts below are in accordance with law or not. "Finding of fact" howsoever erroneous cannot be corrected in revision of this nature. ....

14. Shri M.B.Gandhi has cited an authority in case of PAPER PRODUCTS LTD. v. GITA TEA TRADING CO., reported in



1999(2) G.L.H. (U.J.) 20, wherein this court has, after referring aforesaid authority of Patel Valmik Himatlal (supra), held that High Court cannot-

- (i) function as a court of appeal;
- (ii) reappraise the evidence on record;
- (iii) discard concurrent findings of facts based on evidence recorded by the courts below;
- (iv) interfere on grounds of inadequacy or insufficiency of evidence; and
- (v) interfere, except in case where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse.

15. Shri M.B.Gandhi, the learned advocate for the revision opponents has vehemently argued that in this case, the plaintiffs have proved their case of subletting falling under Sec.13(1)(e) of the Act. He has further argued that to prove a case of subletting, the plaintiffs are required to prove that trespasser who is a sub-tenant of original tenant has come into exclusive possession of the suit premises. For this, he has drawn an attention of this court to Para 14 of the judgment of the Appellate Bench, wherein it is observed that Manjulaben wd/o of original tenant Ramanlal Nathalal has admitted in her evidence at Ex.72 that the suit premises were hired by her husband and brother of her husband Babulal Nathalal were residing together and they started their joint business by hiring the suit shop jointly and subsequently they entered into a partnership business. She has also stated that in the year 1961, her husband and brother of her husband Babulal entered into new Partnership Deed which is produced at Ex.73 in the case, and according to her, said partnership was dissolved in the year 1968 and on the basis of said Dissolution Deed Ex.74, the brother of her husband Babulal Nathalal has come into exclusive possession of the suit shop as a tenant of it, and therefore, now the defendants cannot deny that Babulal Nathalal is not in exclusive possession of the suit shop premises. Now second ingredient which is required to be proved for subletting is that such transfer of possession of suit premises for consideration and for this, Shri M.B.Gandhi has drawn an attention of this court to Para 15 of the judgment of the Appellate Bench. The learned Judges of the Appellate Bench, have observed that Babulal Nathalal has deposed in his evidence that after

dissolution of the partnership, his deceased brother Ramanlal Nathalal has no interest or relation with the suit shop and according to his say, as per Dissolution Deed, he has paid the amount of goodwill to his brother Ramanlal Nathalal, and therefore, he has acquired tenancy rights in the suit shop under the Deed of Dissolution Ex.74. Thus the plaintiffs have proved the consideration for transferring the suit premises to Babulal Nathalal.

16. Shri M.B.Gandhi, the learned advocate for the revision opponents has argued that the defence advanced by the defendants that on and from 8/12/1953 vide rent note Ex.40, original defendant and Babulal Nathalal started their business jointly. It is not the case of the defendants pleaded in the written statement that the original defendant tenant and Babulal Nathalal both had jointly taken the suit premises on lease for their joint business. Admittedly rent note had been executed by only defendant Ramanlal Nathalal. Shri M.B.Gandhi has argued that if both were carrying on their business jointly right from 8/12/1953, then there was no necessity of entering into partnership in the year 1961. As stated earlier, the defendants have not produced any books of account of alleged joint business carried on by the original tenant and Babulal Nathalal for the period from 8/12/1953 to 9/11/1961. Even the defendants have not produced any books of account of the partnership business carried on by two brothers in partnership in which the original defendant and Babulal Nathalal were the partners upto Deed of Dissolution i.e. 21/10/1968. The learned Appellate Judges have, after crytically analysing the evidence, come to a conclusion in Para 17 of their Judgment that it is significant to note that the defendants have not produced accounts book to show that the business of both the brothers was joint and for their joint business, the suit premises was jointly taken on lease in the names of deceased tenant Ramanlal Nathalal and Babulal Nathalal.

17. Shri M.B.Gandhi, the learned advocate for the revision opponents has argued that during the course of the trial of the suit, the defendants had produced original certificate under the Bombay Shops & Establishments Act issued by the Ahmedabad Municipal Corporation and that original certificate dated 12/2/1954 was produced at Ex.79. It means, after taking the suit premises on lease by the original defendant, he started the business in the suit shop for which he had obtained a certificate under the Bombay Shops & Establishments Act. It is strange and curious that during the time before the appeal could be taken up for hearing, that Ex.79 was

taken away by the defendants from the court proceedings with a condition to produce the same could be produced whenever required. The learned Appellate Judges have observed that the defendants have not cared to produce the said document Ex.79 before the Appellate Bench. They have observed that it appears that the document Ex.79 was the first certificate issued by the department on 12/2/1954 and if this document would have been there before the Appellate Bench, then the certainly that document would have thrown much light on the controversy before the Appellate Bench. They have further observed that as the defendants have not cared to produce the said document, adverse inference was drawn that as the document Ex.79 was going against the defendants, they have taken it back from the record and have not produced the same before the Appellate Bench.

18. The learned Appellate Judges have further observed that there is no evidence to prove the presence of Babulal Nathalal on the suit shop for the period upto the year 1961 and after appreciating the evidence, the Appellate Bench has come to the conclusion that the suit premises were hired by Ramanlal Nathalal in the year 1953 and from 1953 to 1961, Ramanlal must have run his own business of Bangles and presentation articles in the suit premises, and brother of deceased tenant Babulal Nathalal came into picture only for the first time in the year 1961 when he entered into partnership with the deceased Ramanlal Nathalal. This conclusion is arrived at on the basis of evidence and it is well discussed by the Appellate Bench and after making critical analysis of the evidence, they have come to a conclusion that Babulal Nathalal is a subtenant of the deceased Ramanlal Nathalal.

20. Shri M.B.Gandhi has further argued that Babulal Nathalal relies on a Deed of Dissolution of the partnership business Ex.74. It is observed by the Appellate Bench that it is the case of the defendants that on the basis of this Deed of Dissolution Ex.74, alleged subtenant Babulal Nathalal has purchased the good-will rights along with tenancy rights of the suit shop from deceased Ramanlal Nathalal and hence Babulal Nathalal has become an absolute owner of the business as well as the tenancy of the suit shop. Shri M.B.Gandhi has argued that this Deed of Dissolution Ex.74 cannot be looked into because it is not a registered document in view of Sec.54 of the Transfer of Property Act. The learned Judges of the Appellate Bench have observed that good-will can only be purchased by a registered document and when Ex.74 is not registered one, Babulal Nathalal

can not rely on that inadmissible evidence.

21. Shri N.N.Gandhi, the learned advocate for the revision petitioners has argued this present matter in such a way that he wanted to see that this court must reappreciate the evidence led by both the parties. In short, his arguments are based on the ground that the judgment challenged in this Civil Revision Application is perverse, meaning thereby the learned Appellate Judges of the Appellate Bench have not considered the evidence led by both the parties in the suit and that they have taken into consideration certain facts which are not there on the record, and therefore, his main thrust of the arguments is that the judgment is not proper and not according to law. During the course of arguments, he has not pointed out any question of law involved in the case. It is his mere say that the judgment is most perverse, and therefore, it cannot be said to be a correct judgment. Indirectly, Shri N.N.Gandhi has argued that the judgment is not according to law on the ground of "absence of propriety".

22. This Court has come across in case of UBAIBA V/S. DAMODARAN, reported in 1999(5) SCC 645. In this case, Sec.20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 has been dealt with by the Hon'ble Supreme Court. Sec.20 of the said Act is with regard to revisional power of High Court. Sec.20 of the said Act is practically similar to sec.29(2) of the Bombay Rent Act. In Sec.29(2) of the said Act, this High Court has to examine the judgment rendered by the Appellate Bench of the Small Causes Court and to come to a conclusion that as to whether the judgment is "according to law" or not. In Sec.20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, expression of word "propriety" is used, and therefore, in that case the High Court was entitled to examine the judgment in light of the word "propriety" used in Sec. 20 of the said Act, 1965. The word "propriety" is defined as (i) appropriateness to the purpose or circumstances, or suitability; (ii) rightness or justness, and therefore, though the High Court was entitled to examine the "propriety" of the judgment, Hon'ble Supreme Court held that High Court exceeded its jurisdiction by reappreciating the evidence. It has been further held in that case by the Hon'ble Supreme Court that notwithstanding the use of expression "propriety" in Sec.20, revisional court, therefore, will not be entitled to reappreciate the evidence and substitute its own conclusion in place of conclusion of the appellate authority.

23. Here in this case, it is the case of the plaintiffs that the suit premises were given to original defendant Ramanlal Nathalal in the year 1953 on rental basis and at that time, original defendant Ramanlal Nathalal had executed rent note in favour of the original landlord Ramanlal Parshottamdas. So far as these facts are concerned, there is no dispute from the side of the defendants that rent note was executed by original tenant Ramanlal Nathalal alone. As against this, it is the case of the defendants that present occupant Babulal Nathalal who is admittedly a brother of original tenant Ramanlal Nathalal, was residing with Ramanlal Nathalal in Devsa's Pol and they both were running the shop in the name and style of Bombay Fashion Hall. Merely by residing together under one roof, it cannot be inferred that Ramanlal Nathalal and Babulal Nathalal were carrying the business jointly. It may be that as they were brothers, they might be residing together even in one house, but in no case, any inference can be drawn that they were carrying the business jointly. It is not the case of the defendants that said business of Bombay Fashion Hall was a joint Hindu Family business, meaning thereby, it is not the case of the defendants that said business was being carried since the time of father of Ramanlal and Babulal. When rent note was executed by Ramanlal Nathalal alone, then tenancy rights were created in favour of Ramanlal Nathalal only and not in favour of Ramanlal with his brother Babulal. It is an admitted fact that for the first time, said Ramanlal Nathalal and Babulal Nathalal entered into the Partnership Deed on 9/11/1961 i.e. eight years after rent note was executed by Ramanlal Nathalal alone. It is also an admitted fact that the business which was carried on by the partnership firm constituted by two brothers, was closed and partnership was dissolved on 21/10/1968, and therefore, that business continued only for seven years. Now it is the case of the defendants that Ramanlal and Babulal were carrying on business jointly since 8/12/1953 and since then the tenancy rights were also created in favour of Ramanlal and Babulal jointly. It is the case of the defendants that tenancy rights created vide rent note dt. 8/12/1953 was for a joint business carried on by Ramanlal and Babulal jointly. If it was so, then the defendants could have produced the books of account of the business of Bombay Fashion Hall. At this stage, it is required to be noted that the suit premises are situated in the heart of business center of Ahmedabad and particularly Ratanpol is well-known for businessmen. Somany shops are situated in Ratanpol and businessmen of their shops situated at Ratanpol are carrying on their respective businesses with a good number of business transactions in their yearly

turn over. If two brothers are carrying on their business jointly in Ratanpol, they must have kept and maintained books of account and in that books of account, they must have debited the rents paid for the suit premises to the original landlord Ramanlal Parshottamdas. Here in this case, Babulal Nathalal entered into witness-box and gave his evidence in detail at length to establish that he is entitled to continue to remain in possession of the suit premises as the tenancy rights were first created for Ramanlal Nathalal and himself for their joint business and lateron, that tenancy rights were transferred to partnership business and ultimately when that partnership was dissolved on the death of original tenant Ramanlal Nathalal, he has become a tenant of the suit premises. If this was so, then Babulal Nathalal could have produced the books of account of the partnership business also, but they have not produced on record any documentary evidence to show that both the brothers were carrying on their business jointly till the year 1961, and they continued that business in partnership and lateron that partnership was dissolved. It may be noted that the rent note was executed by only Ramanlal Nathalal, and therefore, as a natural consequences, it can only be inferred that the suit premises were let to only Ramanlal Nathalal. When Babulal Nathalal has come with a case that he and his brother both were carrying on the business jointly, then it is a bounden duty of the defendants as well as Babulal to prove that though the rent note was executed in favour of Ramanlal Nathalal alone, as a matter of fact, the tenancy rights were created for Ramanlal Nathalal and Babulal Nathalal for joint business. As per Sec.106 of Indian Evidence Act, a person is required to prove the facts which are within his knowledge. The learned Judges of the Appellate Bench have appreciated and considered the entire evidence on record and have come to a conclusion that the case which is advanced by Babulal Nathalal is not believable. He has taken the advantage of Partnership Deed executed on 9/11/1961. From this Partnership Deed, it can be well inferred that for the first time, Babulal Nathalal came into picture in the year 1961 when he entered into the partnership business with his brother Ramanlal Nathalal, as prior to 9/11/1961, Ramanlal Nathalal was the only tenant in the suit premises.

24. At attempt has been made by Mr. N.N.Gandhi by referring the receipts issued by the landlord to show that the rent receipts were signed by Babulal Nathalal. I have perused that receipts and from the rent receipts, it transpires that the receipts for rent received by the

landlord were issued in the name of Ramanlal Nathalal and below that receipts, Babulal Nathalal has signed. Merely because Babulal Nathalal has signed below the said receipts, no inference can be drawn and no conclusion can be arrived at to the effect that Babulal Nathalal had also interest in the tenancy rights in the suit premises. If "A" is a tenant and "B" is a landlord, and if "A" sends his brother "C" to "B" to pay the rent, naturally "C" would sign the receipt as a person who paid the rent, and therefore, that "C" acted as an agent for "A". Merely because "C" has signed the receipts, it cannot be said that tenancy rights were created for "A" and "C" jointly as they are two brothers, and therefore, the receipts on which Mr. N.N.Gandhi placed much reliance cannot be accepted as a conclusive proof for joint tenancy in favour of Babulal Nathalal.

25. Shri N.N.Gandhi has further argued that if we read the receipts, we find that at the top of such receipts, words "Bombay Fashion Hall" are written. If Ramanlal Nathalal was carrying on business in the name and style of Bombay Fashion Hall, there would certainly be a reference of name of business in the receipts, and therefore, no further inference can be drawn on the basis of such reference of "Bombay Fashion Hall" in that receipts, and therefore, from the receipts only, no inference can be drawn as suggested by Shri N.N.Gandhi. The learned Judges of the Appellate Bench have discussed the evidence of Babulal Nathalal (Ex.73) in Paras 13, 15, 16 and 17 of the judgment. It is observed in the judgment rendered by the learned Judges of the Appellate Bench that even after the death of Ramanlal Nathalal i.e. original tenant, the rent receipts were issued in the name of Ramanlal Nathalal, but the signatures of Babulal Nathalal were taken as tenant and was signed by original landlord Modi Ramanlal Parshottamdas. If really, after the death of Ramanlal Nathalal and after dissolution of partnership business, Babulal Nathalal had become the sole tenant of the suit premises, then he would have certainly objected to the landlord for issuance of receipts in the name of Ramanlal Nathalal. The learned Judges of the Appellate Bench have discussed and critically analysed the evidence of both the parties and have come to a conclusion that the plaintiffs have successfully proved that the suit premises have been sublet or transferred by the defendants in the name of Babulal Nathalal. Now this findings is purely a question of fact. It is not the case of the defendants that the learned Appellate Judges have come to a conclusion on the basis of "no evidence". This court is very much conscious of the fact that if any conclusion is arrived

at on the basis of "no evidence", then certainly this court can reappreciate the evidence and come to a correct conclusion. Here in this case, both the parties have led their evidence keeping in mind the issues framed by the learned Judge of the trial court. The learned Judges of Appellate Bench have assigned cogent and plausible reasons to reach a particular conclusion keeping in mind the well settled principles of law with regard to appreciation of evidence, and therefore, the judgment challenged in this Civil Revision Application cannot be said to be "not according to law".

26. Shri N.N.Gandhi has made a serious attempt to substantiate his arguments that the judgment is perverse by reading the evidence of all the witnesses along with documentary evidence. While he was arguing, he was pointing out sentence by sentence from the deposition and canvassing his arguments that the particular evidence in a particular sentence is not considered by the learned Judges of Appellate Bench. Naturally, when evidence is to be appreciated, it is not to be appreciated in piecemeal. A Judge has to read the whole evidence including examination-in-chief and re-examination, if any. He also keeps in mind the cross-examination of witnesses also, and therefore, the learned Judges of the Appellate Bench had appreciated the evidence as a whole and not as in piecemeal as canvassed by Mr. N.N.Gandhi, and therefore, the arguments advanced by Shri N.N.Gandhi that the judgment is perverse by showing scattered sentences here and there from the evidence of a particular witness cannot be accepted. At this stage, it is required to know as to what is meant by "appreciation of evidence". In case of NARAIN PRASAD v. THE STATE OF RAJASTHAN AND ANOTHER, reported in AIR 1978 RAJASHTAN 162, a Full Bench of Rajasthan High Court has made an attempt to explain the appreciation of evidence and it has been held in Para 25 of the said judgment as under:-

" The revisional jurisdiction is normally to be exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of point of law and consequently, there has been a flagrant miscarriage of justice. The process of appraising the evidence led by two parties can be equated almost to the process of holding a balance, the time honoured symbol of justice. Sometimes, when the two pans of the balance are seemingly equal, even a slight evidence, circumstantial or otherwise, tilts the balance on one side and thereby probabilises the case of one



party as against the other. In this process of holding the balance, what pieces of evidence, would lean the balance in favour of one party is dependent on the evidence available in a given case. But asking the revisional court to say that this piece of evidence should have weighed more than the other is nothing more than seeking a reassessment of evidence. Appreciation of evidence is a mental process involving selection, assessment and conclusion. Which statement ought to weigh and how much, cannot be rigidly laid down. "

Looking to the legal position with regard to appreciation of evidence, this court is satisfied that the learned Judges of the Appellate Bench have appreciated the evidence keeping in mind all the well settled principles of law with regard to appreciation of evidence. This court finds nothing otherwise to hold that the judgment rendered by the learned Judges of the Appellate Bench is not according to law.

28. When the learned Judges of the Appellate Bench have come to a conclusion that Babulal Nathalal is a sub-tenant of original tenant, then the plaintiffs have made out their case of subletting falling under Sec.13(1)(e) of the Act. To prove case of subletting, the landlord is required to prove that without the consent of the landlord, the tenant has transferred the possession of rented premises to a third person. To prove a case of subletting, landlord is required to prove that third person is in exclusive possession of rented premises and consequently for transfer of rented premises to such a third person, that transfer has been made for some consideration. Here in this case, it is the case of the defendants that Babulal Nathalal is in exclusive possession of the suit premises. Now it is well settled principles of law that it is very difficult for the landlord to prove that transfer of rented premises to a third person is for some consideration. One has to make some inference from the admitted facts on record. It is within the knowledge of the defendants as to how Babulal Nathalal has come into possession of the suit premises, and looking to the provisions of Sec.106 of Indian Evidence Act, the burden of proof is on the defendants to prove that Babulal Nathalal has come into possession of the suit premises without any consideration. Babulal Nathalal has deposed that he is helping the heirs and legal representatives of original landlord by paying certain amounts. This fact itself shows that the suit premises have been transferred for some consideration, and therefore, the learned Judges of the Appellate Bench

have come to a right conclusion that the plaintiffs have made out their case of subletting.

29. Thus looking to the contentions taken by Shri M.B.Gandhi, the learned advocate for the revision opponents and after taking into consideration the judgment challenged in this Civil Revision Application, this court finds that the judgment is according to law and in no case it can be said to be perverse as alleged by Shri N.N.Gandhi, the learned advocate for the revision petitioners. As discussed earlier, Mr. N.N.Gandhi argued in such a way that he invited this court to rehear the matter afresh by reading evidence of witnesses, line by line and again reappreciate the same to come to a conclusion as desired by Mr. N.N.Gandhi. This is not possible in view of settled principles of law with regard to Sec.29(2) of the Act that this court cannot rehear the matter afresh and reappreciate the evidence to substitute its own decision in place of decision arrived at by the Appellate Bench.

30. It is one of the arguments of Shri N.N.Gandhi that though admittedly Babulal Nathalal is in possession of suit premises. Plaintiff did not make said Babulal Nathalal as party as defendant in the suit, and therefore, suit is bad for non-joinder of parties. In view of sec.13(1)(e) of the Act, sub-tenant is not required to be joined as defendant in the suit.

31. Except above contentions, no other contentions were taken by either parties.

32. In view of what is discussed hereinabove, this Civil Revision Application is devoid of merits and the same is required to be dismissed, and accordingly, it is dismissed. Rule is discharged, with no order as to costs. Ad-interim stay granted on 15-04-1988 shall stand vacated forth with.

Date: 06/9/2000. (H.H.MEHTA,J.)  
ccshah

After pronouncing aforesaid judgment, Shri N.N.Gandhi, learned advocate for the revision -petitioner requests to stay the operation of decree passed pursuant to Judgment Exh.10 dated 22-02-1988 in Civil Appeal No. 209 of 1981 atleast for eight weeks, as the Revision -Petitioners want to challenge this judgment in Apex Court. Mr. M.B.Gandhi, learned advocate for the Revision -Opponent is not present when this request is made. Looking to the request made by Mr. N.N.Gandhi,

for and on behalf of the Revision -Petitioners (i.e. original defendants) the execution and implementation of decree passed in Civil Appeal No. 209 of 1981 is stayed for four weeks only, provided Revision -Petitioners give usual Undertaking on affidavit, with usual terms and conditions, to this Court within two weeks from date of this order.

Date: 06/9/2000. (H.H.MEHTA,J.)

ccshah